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| <b>UNITED STATES BANKRUPTCY COURT<br/>DISTRICT OF NEW JERSEY</b>   |                         |
| <b>Caption in Compliance with D.N.J. LBR 9004-1(b)</b>   |                         |
| <b>PORZIO, BROMBERG &amp; NEWMAN, P.C.</b><br>100 Southgate Parkway<br>P.O. Box 1997<br>Morristown, New Jersey 07962<br>(973) 538-4006<br>(973) 538-5146 Facsimile<br>John S. Mairo, Esq.<br>(jsmairo@pbnlaw.com)  |                         |
| -and-  |                         |
| 1675 Broadway, Suite 1810<br>New York, New York 10019<br>(212) 265-6888<br>Dean M. Oswald, Esq.<br>(dmoswald@pbnlaw.com)<br>( <i>pro hac vice admission pending</i> )<br><br><i>Counsel for DPEG Fountains, LP</i> |                         |
| In re:   | Chapter 11              |
| BED BATH & BEYOND INC., <i>et al.</i> ,  | Case No. 23-13359 (VFP) |
| Debtors. <sup>1</sup>  | (Jointly Administered)  |

**CERTIFICATION OF NIKHIL DHANANI  
IN SUPPORT OF DPEG FOUNTAINS LP'S OBJECTION TO THE  
NOTICE OF ASSUMPTION OF CERTAIN UNEXPIRED LEASES**

I, NIKHIL DHANANI, do hereby certify the following:

1. I am a principal of Dhanani Private Equity Group, which focuses on real estate development and has a portfolio that includes, among other things, retail space and residential real estate.

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<sup>1</sup> The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

2. Dhanani Private Equity Group creates legal entities that operate as landlords to these investments.

3. One of the legal entities operating under Dhanani Private Equity Group is DPEG Fountains, LP ("DPEG").

4. DPEG is the landlord for the shopping center located at The Fountains on the Lake, 12520 Fountain Lake Circle, Stafford, TX, 77477.

5. In my role with Dhanani Private Equity Group, I am familiar with (i) DPEG's business, (ii) the shopping center located at 12520 Fountain Lakes Circle, Stafford, TX 77477; and (iii) the lease provisions mentioned herein regarding DPEG's leases with Ross Dress For Less, Inc. and Bed Bath & Beyond.

6. I am making this Certification in support of DPEG's objection (Docket No. 1344) (the "Objection").

**A. The Fountains on the Lake is a Shopping Center**

7. The below is true regarding the Fountains on the Lake shopping center:

- a. There is a combination of leases for tenants;
- b. All leases are held by a single landlord;
- c. All tenants are engaged in the commercial distribution of goods;
- d. There is a common parking area;
- e. The purposeful development of the premises was as a shopping center;
- f. There is contractual interdependence of the tenants, as evidenced by restrictive use provisions in certain leases;
- g. There is a tenant mix; and
- h. The stores are contiguous.

**B. The Ross Lease**

8. On December 5, 2012, Fountains Dunhill, LLC, as a predecessor in interest to DPEG, and Ross Dress for Less, Inc. ("Ross"), as tenant, entered into a written lease agreement for approximately 25,000 square feet of retail premises located in the Fountains on the Lake shopping center (the "Ross Lease").<sup>2</sup>

9. Section 15.3 of the Ross Lease provides that DPEG agrees that, during the term of the lease:

Subject to Section 15.3(b) below respecting Existing Leases, without the prior written consent of Tenant, which consent may be withheld in the absolute and sole discretion of Tenant, ***no tenant or occupant of the Shopping Center (other than Tenant) may*** use, and Landlord, if it has the capacity to do so, shall not permit any other tenant or occupant of the Shopping Center to ***(a) use its premises for the Off Price Sale (as hereinafter defined) of merchandise***, or (b) use more than ten thousand (10,000) square feet of Leasable Floor Area of its premises for the sale of apparel (except for discount department stores in excess of eighty-five thousand (85,000) square feet of Leasable Floor Area), or (c) use its premises for the sale of whole bean and ground coffee (other than Tenant, a supermarket, grocery store, or local bakery, or by Dunkin' Donuts, Caribou Coffee, Peets, Indigo, or other national or regional coffee retailer or coffee shop with up to (but not more than) 500 stores. For purposes of this Section 15.3 "Off Price Sale" shall mean the retail sale of merchandise on an every day basis at prices reduced from those charged by full price retailers, such as full price department stores; provided, however, this definition shall not prohibit sales events by a retailer at a price discounted from the retailer's every day price. (As of the Effective Date, ***examples of Off Price Sale retailers include such retailers as*** T.J. Maxx, Marshalls, A.J. Wright, Fallas Paredes, Nordstrom Rach, Goody's, Factory 2U, ***Burlington Coat***, Setinmart, Filene's Basement Goodmans and Beall's Outlet)...

Ross Lease §15.3 (emphasis added).

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<sup>2</sup> A true and correct copy of the Ross Lease is attached as **Exhibit B** to the Objection (Docket No. 1344-2). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Ross Lease.

10. The Ross Lease provides Ross remedies in the event one of the above Off Price Retailers entering the Fountains on the Lake in violation of Ross's exclusivity provision:

If any of the foregoing provisions is violated ("Protection Violation"), commencing on the first day of the Protection Violation and continuing throughout the period of the Protection Violation, Tenant, in addition to all other remedies available at law or in equity, including injunctive relief, shall have the ongoing right, exercisable by written notice to Landlord, either to terminate this Lease or to pay Substitute Rent...<sup>3</sup>

11. Based on the above, it is my understanding that the proposed assignment of the Bed Bath & Beyond lease to Burlington, if approved, would result in a violation of Section 15.3 of the Ross Lease, which would expose DPEG to potential damages in the form of: (a) termination of the Ross Lease, which has approximately sixty-six months remaining (which includes an exercised option period) and approximate rent owed for that time period of over \$1.5 million; or (b) Ross paying a Substituted Rent of either its Minimum Rent or 2% of its Gross Sales during the preceding month.

12. As provided in the Objection, Ross has objected to the assignment of the subject lease to Burlington because of Section 15.3 of the Ross Lease.

**C. Bed Bath & Beyond Cure Amount / Adequate Assurance**

13. Pursuant to Bed Bath & Beyond's lease with DPEG<sup>4</sup>, the Debtors are obligated to pay "... all reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies, including reasonable attorneys' fees."<sup>5</sup>

14. As of the date hereof, DPEG has incurred, or is expected to incur, approximately \$20,000 in attorneys' fees related to outstanding obligations under the Bed Bath & Beyond lease.

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<sup>3</sup> *Id.*

<sup>4</sup> A true and correct copy of the Bed Bath & Beyond lease is attached hereto as **Exhibit A** to the Objection (Docket No. 1344-1).

<sup>5</sup> Bed Bath & Beyond Lease § 18(d).

**D. Tenant Mix**

15. In leasing out its retail space, it is DEPG's customary practice to ensure that incoming tenants do not disrupt the carefully planned tenant mix and balance currently in place at the Fountains on the Lake.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of these statements are willfully false, I am subject to punishment.

Dated: July 27, 2023

By /s/ Nikhil Dhanani  
Nikhil Dhanani

**CERTIFICATE OF SERVICE**

I hereby certify that on July 27, 2023, I caused a true and correct copy of the foregoing document to be served by electronic means through the CM/ECF system to all registered participants in this case and by e-mail on the parties identified on the Service List.

/s/ John S. Mairo  
John S. Mairo

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